

FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

PAUL K. SCHMIDLKOFER, R.PH.
RESPONDENT.

90 PHM 66

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Paul K. Schmidlkofer, R.Ph.
7241 West Marine Drive
Milwaukee, WI 53223

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Paul K. Schmidlkofer is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license # 6655.

2. The Respondent did, on September 20, 1990, receive a prescription for 180 Dilantin 100 mg. for patient Errol G., with instructions to take six per day. Respondent dispensed 180 Dyazide capsules instead of Dilantin, and labeled the bottle as Dilantin with the instructions as stated on the prescription. Respondent states: "I can only assume that both bottles of Dilantin and Dyazide were on the counter at the same time and the pharmacy technician used the wrong bottle. It is my practice to always take the bottle of the proper

medication and hand it to the technician, rather than allowing them to get the medication themselves."

3. This was the first time this patient had received this medication. Dilantin is usually given to adults with instructions to take 100 mg three times per day. Respondent did not consult with the prescriber or the patient concerning when and how the patient should take the six capsules per day.

CONCLUSIONS OF LAW

4. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to § 450.10(1), Wis. Stats.

5. The Board is authorized to enter into the attached Stipulation pursuant to § 227.44(5), Wis. Stats.

6. The conduct described in paragraphs 2 and 3, above, violated § Phar 7.01(1)(a), (c), and (e), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Paul K. Schmidkofer, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED. that respondent shall pay the costs of the investigation and prosecution of this matter in the amount of \$100, within 30 days of this order.

Dated this 10th day of November, 1992.

WISCONSIN PHARMACY EXAMINING BOARD

by: Thomas M. Grogan
a member of the Board

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PAUL K. SCHMIDLKOFER, R.PH.
RESPONDENT.

STIPULATION

90 PHM 66

It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent is aware of and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. By entering to this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

Paul K. Schindler R. Pl.
Respondent

10/17/92
Date

[Signature]
Prosecuting Attorney
Division of Enforcement

10/21/92
Date

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining, Board.

The date of mailing of this decision is November 11, 1992.